

## CCRB INVESTIGATIVE RECOMMENDATION

|  |                                     |                           |   |                                    |  |
|--|-------------------------------------|---------------------------|---|------------------------------------|--|
| Investigator:<br>Monique West                    | Team:<br>Squad #2                   | CCRB Case #:<br>201509330 | <input checked="" type="checkbox"/> Force             | <input type="checkbox"/> Discourt. | <input type="checkbox"/> U.S.              |
|  |                                     |                           | <input checked="" type="checkbox"/> Abuse             | <input type="checkbox"/> O.L.      | <input checked="" type="checkbox"/> Injury |
| Incident Date(s)<br>Monday, 10/26/2015 6:00 AM   | Location of Incident:<br>§ 87(2)(b) | Precinct:<br>62           | 18 Mo. SOL<br>4/26/2017                               | EO SOL<br>4/26/2017                |  |
| Date/Time CV Reported<br>Mon, 10/26/2015 6:45 AM | CV Reported At:<br>IAB              | How CV Reported:<br>Phone | Date/Time Received at CCRB<br>Mon, 11/02/2015 2:15 PM |                                    |  |

| Complainant/Victim | Type       | Home Address |
|--------------------|------------|--------------|
| § 87(2)(b)         | § 87(2)(b) | § 87(2)(b)   |
| § 87(2)(b)         | § 87(2)(b) | § 87(2)(b)   |

| Witness(es) | Home Address |
|-------------|--------------|
| § 87(2)(b)  | § 87(2)(b)   |
| § 87(2)(b)  | § 87(2)(b)   |
| § 87(2)(b)  | § 87(2)(b)   |

| Subject Officer(s)    | Shield | TaxID  | Command |
|-----------------------|--------|--------|---------|
| 1. DT3 Andrew Cerase  | 3014   | 924042 | WARRSEC |
| 2. SGT Carlos Narvaez | 01318  | 926391 | WARRSEC |

| Witness Officer(s)        | Shield No | Tax No | Cmd Name |
|---------------------------|-----------|--------|----------|
| 1. DT3 Victor Sadarangani | 7862      | 934143 | WARRSEC  |
| 2. DT3 John Sheedy        | 7177      | 935733 | WARRSEC  |
| 3. SGT Paul Adams         | 00883     | 924866 | 062 PCT  |
| 4. DT3 Brian Macarthur    | 7110      | 945938 | WARRSEC  |
| 5. DT3 Anthony Rodriguez  | 6388      | 935614 | WARRSEC  |

| Officer(s)           | Allegation  | Investigator Recommendation |
|----------------------|---|-----------------------------|
| A.DT3 Andrew Cerase  | Abuse: Det. Andrew Cerase entered and searched § 87(2)(b) in Brooklyn.  | § 87(2)(b)                  |
| B.SGT Carlos Narvaez | Abuse: Sgt. Carlos Narvaez entered and searched § 87(2)(b) in Brooklyn. | § 87(2)(b)                  |
| C.SGT Carlos Narvaez | Force: Sgt. Carlos Narvaez used physical force against § 87(2)(b)       | § 87(2)(b)                  |
| D.DT3 Andrew Cerase  | Abuse: Det. Andrew Cerase refused to provide his name to § 87(2)(b)     | § 87(2)(b)                  |

### Case Summary

On October 26, 2015, at approximately 6:45 a.m., Det. Andrew Cerase and Det. John Sheedy of the Queens Warrant Squad entered and searched the § 87(2)(b) in Brooklyn in search of § 87(2)(b) who had an active bench warrant (**allegation A**). At the location, they encountered § 87(2)(b) the owner of the location and the mother of § 87(2)(b). When Sgt. Carlos Narvaez of the Queens Warrant Squad arrived at the location, he reentered and searched the location (**allegation B**). Sgt. Narvaez allegedly pushed § 87(2)(b) and then flung her into a wall (**allegation C**). Det. Cerase allegedly failed to provide his name to § 87(2)(b) (**allegation D**). There were no arrests or summonses issued.

§ 87(2)(g)

There is no video footage that captures this incident.

### Mediation, Civil and Criminal Histories

- This case was unsuitable for mediation due to a civil lawsuit filed by § 87(2)(b) regarding the incident.
- On § 87(2)(b), § 87(2)(b) filed a Notice of Claim regarding this incident claiming personal injury and illegal entry and seeking an undisclosed amount for adjustment and payment (Board Review 01).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

### Civilian and Officer CCRB Histories

- This is the first CCRB complaint filed by § 87(2)(b) (Board Review 03).
- This is the first CCRB allegation against Det. Cerase during his 16 year tenure with the NYPD (see officer history).
- Sgt. Narvaez has been a member of the NYPD for 15 years, has had six prior CCRB allegations against him involving two cases with one substantiated allegation. In CCRB case #201409443, an allegation that Sgt. Narvaez entered an apartment without justification was substantiated and charges were recommended. The NYPD disposition is pending (see officer history).

### Findings and Recommendations

#### Explanation of Subject Officer Identification

- Det. Cerase was the investigating officer for the bench warrant he executed on the incident date. § 87(2)(g)
- The search of the second floor did not occur until Sgt. Narvaez arrived on scene. Sgt. Narvaez was the top ranking officer on scene at the time. § 87(2)(g)
- § 87(2)(b) stated that there were two officers who originally entered her home. She identified one of the officers by name as “Seedy” and alleged that his partner refused to provide his name to her. Det. Cerase and Det. Sheedy admitted to being the first two on scene. § 87(2)(g)

### Allegations not pleaded

- **Abuse of Authority:** § 87(2)(b) alleged that she asked to see the search warrant, after officers told her that they had one but they refused to show it to her. This allegation was not pleaded because the officers did not have a search warrant for her home.

### Allegation A- Abuse of Authority: Det. Andrew Cerase entered and searched § 87(2)(b) in Brooklyn.

### Allegation B- Abuse of Authority: Sgt. Carlos Narvaez entered and searched § 87(2)(b) in Brooklyn.

It is undisputed that Det. Cerase and Det. Sheedy entered and searched § 87(2)(b) in Brooklyn in search of § 87(2)(b) with a bench warrant from 2007 that listed his address as § 87(2)(b) in Brooklyn (Board Review 04). It is also undisputed that § 87(2)(b) most recent arrest report prior to the date of entry from § 87(2)(b) of 2015 and a Domestic Incident Report from § 87(2)(b) 2015 listed his address as § 87(2)(b) (Board Review 05) as well as an I-card prepared a few days prior to the entry (Board Review 06). It is undisputed that § 87(2)(b) allowed the officers into the vestibule of her home and told them that § 87(2)(b) did not live there and was not there at that time. It is also undisputed that after this she asked them to leave, at least one for the officers searched an area that she had not given permission for. It is also undisputed that after Det. Cerase and Det. Sheedy left the location, Sgt. Narvaez reentered and searched the location with Det. Rodriguez and Det. Macarthur. It is undisputed that there was no search warrant for the location and that the officers remained at § 87(2)(b)'s home for approximately 3 hours.

§ 87(2)(b) stated that when the officers told her that they saw a man in her home, she explained that she has borders and they must have seen one of them. § 87(2)(b) stated that when Sgt. Narvaez arrived on scene she told him that he did not have permission to search her home when he asked but Sgt. Narvaez continued the search of every room inside of her home.

§ 87(2)(b) made six calls to 911 while the officers were in her home to complain about them being there. In § 87(2)(b)'s third call to 911, a male is heard in the background, saying "excuse me" and asking § 87(2)(b) to step up. § 87(2)(b) said no and told the officer that this was her house. § 87(2)(b) stated to the operator that the officer was touching and pushing her. She then stated, "Oh my God. He just hit me" and continued to repeat that the officer had hit her. After § 87(2)(b) was connected to IAB, she stated that Sgt. Narvaez hit her and pushed her through the door and slammed her against the wall (Board Review 17).



201509330\_20160202\_1438\_DM.mp4

Det. Cerase explained that they entered and searched § 87(2)(b) in search of § 87(2)(b) on a bench warrant and that although the bench warrant had a different address on it, they had an I-card, an arrest report and a DIR that were more recent than the bench warrant listing § 87(2)(b)'s address as § 87(2)(b). When questioned, Det. Cerase explained that this was how they determined that § 87(2)(b) resided at that address.

A request for Queens Warrant DD5s involving § 87(2)(b) came back negative, confirming that the officers did not conduct any additional research to determine § 87(2)(b)'s address (Board Review 20).

A search of the Department of Buildings revealed that there are three levels in the home and each level is a separate one family apartment (Board Review 13).

Photographs taken of the incident location by the undersigned revealed that there are two mailboxes and two door bells outside of the front door. One of the mailboxes has numerous names on it (Board Review 19).

Det. Sheedy and Det. Cerase also explained that when they arrived on scene, Det. Sheedy saw a male that resembled § 87(2)(b) through the front window and when they knocked, the male disappeared further into the house (Board Review 08 and 09).

Sgt. Narvaez stated that § 87(2)(b) provided permission for him to search the first and the second floor of her home. He stated that she was compliant and other than providing him permission to search her home, she did not say anything (Board Review 11).

Det. Rodriguez stated that after attempting to explain to § 87(2)(b) for approximately 25 minutes why they were there and what authority they had to search her home, Sgt. Narvaez asked § 87(2)(b) whether she was going to give permission for them to search her home and she replied, "Go ahead. He's not here." Before they went upstairs, Sgt. Narvaez asked, "Is there going to be a problem with us looking upstairs?" and she replied, "no" (Board Review 12).

A bench warrant permits entry into what the police reasonably believe to be the suspect's residence provided that at the time of the entry the police reasonably believe that the suspect is present. The reasonableness of this belief is based upon the amount of information available to the officer at the time of the entry, as well as the age of this information. People v. Smith, 806 N.Y.S. 2d 447 (2005) (Board Review 10). Submission to authority does not constitute consent. People v. Farquharson, 901 N.Y.S.2d 901 (2009 — Sup. Ct. Bronx County). Consent must be voluntary in that it cannot be produced by intimidation or harassment. Florida v. Bostick, 501 U.S. 429 (1991). A law enforcement officer cannot legally search, without a search warrant, for the subject of an arrest warrant in the home of a third party. People v. Smith, 806 N.Y.S. 2d 447 (2005). In order to demand entry to the dwelling of a third party in order to execute an arrest of another person, the officer must additionally possess a search warrant. Without a search warrant, an officer may only enter a third party's dwelling if he has consent or there are exigent circumstances. People v. Rodriguez, 19 Misc. 3d 302 (2008). According to McBride, the following factors have been used to determine if exigent circumstances exist: (1) the gravity or violent nature of the offense with which the suspect is to be charged; (2) whether the suspect is reasonably believed to be armed; (3) a clear showing of probable cause to believe that the subject committed the crime; (4) strong reason to believe that they suspect is in the premises being entered; (5) a likelihood that the suspect will escape if not swiftly apprehended; and (6) the peaceful circumstances of the entry. People v. McBride, 14 N.Y.3d 440 (2010). Absent a valid search warrant or exigent circumstances, consent is required to search a location; consent must be knowing and voluntary and a false statement regarding the presence of a warrant negates the possibility of consent. Bumper v. North Carolina, 391 U.S. 543, 548 (1968). (Board Review 10).

§ 87(2)(g), § 87(2)(b)

§ 87(2)(b), § 87(2)(g) [Redacted text block]

[Redacted text block]

[Redacted text block]

§ 87(2)(g) [Redacted text block]

[Redacted text block]

**Allegation C- Force: Sgt. Carlos Narvaez used physical force against** § 87(2)(b)

It is undisputed that Sgt. Narvaez made physical contact with § 87(2)(b) § 87(2)(g)

§ 87(2)(b) stated that after Sgt. Narvaez entered § 87(2)(b)'s apartment, she told him that he could not do that. Sgt. Narvaez told her to get out but she argued that as the owner of the house and the landlord, she had a right to be there. Sgt. Narvaez pushed her, causing her to stumble backwards. She asked him if he really put his hands on her and assaulted her but did not physically react. Sgt. Narvaez then took § 87(2)(b) by her jacket, picked her up and flung her out of the bedroom door into the wall. § 87(2)(b) went downstairs, screaming and crying, that Sgt. Narvaez assaulted her and she was hurt. § 87(2)(b) claimed that she sustained, as a result of this force, a headache, a hematoma to the back of her head, a sprained neck and pain to her back and hip.

§ 87(2)(b) stated that while an officer was questioning her about § 87(2)(b)'s son, she heard § 87(2)(b) was arguing with the officers. From what § 87(2)(b) gathered, § 87(2)(b) wanted to go inside with the officers and be involved but they would not allow her to. Two officers grabbed § 87(2)(b) by her arm and walked her away (Board Review 14).

§ 87(2)(b) one of § 87(2)(b)'s tenants, stated that he saw officers enter § 87(2)(b)'s apartment and then he left to get coffee. When he returned, § 87(2)(b) told him that an officer pushed her but he did not witness this (Board Review 15).

§ 87(2)(b) § 87(2)(b)'s roommate, stated that she was in the kitchen on the first floor when she heard § 87(2)(b) and the officers talking upstairs. The officers were trying to get into the apartment upstairs but § 87(2)(b) did not want them to bother her tenant because she had a young daughter that was asleep. § 87(2)(b) heard a loud thump up against the wall and heard § 87(2)(b) say, "You shoved me." § 87(2)(b) heard another loud noise and heard § 87(2)(b) complain that an officer pushed her against the wall and she hit her head (Board Review 16).

§ 87(2)(b)'s third call to 911 captured the moment § 87(2)(b) claimed to be pushed. A male is heard in the background, saying "excuse me" and asking § 87(2)(b) to step up. § 87(2)(b) said no and told the officer that this was her house. § 87(2)(b) stated to the operator that the officer was touching and pushing her. She then stated, "Oh my God. He just hit me" and continued to repeat that the officer had hit her. After § 87(2)(b) was connected to IAB, she stated that Sgt. Narvaez hit her and pushed her through the door and slammed her against the wall (see audio file 201509330\_20160202\_1438\_DM.mp4).

In her fourth call to 911, she stated that she was pushed and thrown against a wall in the hallway. In her fifth call to 911, she stated that Sgt. Narvaez flung her across the hallway and hurt her back (Board Review 17).

Sgt. Narvaez stated that as they conducted the search of the second floor, § 87(2)(b) followed closely behind them. She was too close for his comfort and the safety of the search. Her proximity to him made him feel unsafe. Sgt. Narvaez stated that as he went into one of the rooms, he put a hand on § 87(2)(b)'s shoulder and asked her to do him a favor and wait in the hallway until after the search was conducted. § 87(2)(b) complied and stayed where she was as he continued with the search. She did not put up any resistance and he did not make any physical contact with her after that. Sgt. Narvaez did not push § 87(2)(b) nor did he grab her by her jacket and push her into a wall. § 87(2)(b) did not stumble or fall.

Det. Rodriguez stated that when he and Sgt. Narvaez entered § 87(2)(b)'s room, § 87(2)(b) followed them. Sgt. Narvaez turned around and asked her to stay outside but she said no. She yelled that they could not be in there and she wanted them out. § 87(2)(b) was right on Sgt. Narvaez's back. Sgt. Narvaez turned around, stretched his hand out towards her and asked her again to stay where she was. § 87(2)(b) and Sgt. Narvaez argued. He continued to ask § 87(2)(b)

§ 87(2)(b) to step back and she continued to argue that they had no right to be there and began pushing forward. Sgt. Narvaez held his hand out and told § 87(2)(b) to stop. Det. Rodriguez initially stated that he did not see it but he heard § 87(2)(b) say, “You pushed me. You’re assaulting me” and when he turned around to look, Sgt. Narvaez was standing in front of § 87(2)(b) who was also standing. Sgt. Narvaez told § 87(2)(b) that he did not touch her. Det. Rodriguez later stated that he had been facing the door in the direction of Sgt. Narvaez and § 87(2)(b) while speaking to § 87(2)(b) because he wanted to keep an eye on things. He had an eye on them the entire time and saw Sgt. Narvaez with his arm out towards § 87(2)(b) but did not see him make contact with her. He could not tell from that angle how close Sgt. Narvaez’s hand was to § 87(2)(b) but § 87(2)(b) never stumbled or moved back prior to stating that Sgt. Narvaez pushed her. Sgt. Narvaez did not grab her by her jacket and fling her against the wall and § 87(2)(b) never complained of pain or injuries.

Det. Macarthur stated that he did not see or hear § 87(2)(b) when they entered the apartment on the second floor. He did not see Sgt. Narvaez push § 87(2)(b) and did not hear § 87(2)(b) complain that she had been pushed or injured. Det. Macarthur never saw § 87(2)(b) and Sgt. Narvaez arguing (Board Review 18).

§ 87(2)(b) went to § 87(2)(b) immediately following the incident. According to medical records, she complained of pain in her right upper back, neck, and the lower back of her head. She stated that she was thrown against the wall and hit the back of her head and back. She complained of having a dull pain in the right part of the lower back of her head and the upper back area. An examination of her head found a tender 2x2 centimeter area of swelling in the right part of the lower back of her head and prominence at the bottom of her neck. She was diagnosed with musculoskeletal pain and a hematoma (Privileged document 01).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation D- Abuse of Authority: Det. Andrew Cerase refused to provide his name to**

§ 87(2)(b)

§ 87(2)(b) alleged that when Sgt. Narvaez arrived on scene, she asked Det. Cerase and Det. Sheedy for their names in front of Sgt. Narvaez. Det. Cerase allegedly responded, “We told you our names before” and never provided his name to her.

§ 87(2)(b) stated that after the officers searched the house § 87(2)(b) asked all of the officers for their information and each one of them provided this information to her.

Det. Cerase stated that he provided his name to § 87(2)(b) Det. Sheedy stated that he did not hear § 87(2)(b) ask any officer aside from himself for their name, which he provided to her. Sgt. Narvaez stated that he did not hear any officer refuse to provide their name to § 87(2)(b)

§ 87(2)(b)

§ 87(2)(g)

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Squad: 2

Investigator: \_\_\_\_\_  
Signature Print Date

Squad Leader: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
Title/Signature Print Date